

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-105884-13

Date:

April 17, 2013

Legend

Grantor =

Daughter =

Grandson =

Taxpayer =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Date 1 =

Date 2 =

Date 3 =

State =

Statute 1 =

Statute 2 =

Dear :

This letter responds to your January 30, 2013 letter, and subsequent correspondence, requesting a ruling on the federal gift tax consequences of a proposed disclaimer of your remainder interest in each of Trust 1, Trust 2, Trust 3, and Trust 4 (collectively, Trusts).

The facts submitted are as follows:

Grantor created Trusts several years before his death on Date 1, a date before January 1, 1977, for the benefit of the lawful lineal descendants of his daughter (Daughter), *per stirpes*. Daughter's son, Grandson is the current beneficiary of Trusts. Upon the death of Grandson, Grandson's son (Taxpayer) will be entitled to income distributions from Taxpayer's *per stirpital* share of Trusts. The income distributions will continue until the earlier of Taxpayer's death or the perpetuities date. Upon termination of each of the Trusts, any remaining trust property will be distributed to Taxpayer and Taxpayer's brother, *per stirpes*.

Taxpayer, who is over 18 years of age, represents that Taxpayer learned of the transfers creating his interests in Trusts on Date 2. Taxpayer further represents that he had no knowledge that he possessed any interest in Trusts, prior to Date 2. Taxpayer proposes to execute and timely file and deliver a written disclaimer to the trustees for each of Trust 1, Trust 2, Trust 3, and Trust 4, on or before Date 3, stating that he irrevocably, unconditionally and without qualification, disclaims and refuses to accept any interest that would otherwise pass to Taxpayer under the relevant provisions of Trusts. The disclaimers will be valid under Statute 1 and Statute 2. Date 3 is a date occurring not more than nine months after Date 2.

Trusts are governed by the laws of State. Statute 1 provides that a grantee, donee, person succeeding to a disclaimed interest, beneficiary under a nontestamentary

instrument or contract or person designated to take pursuant to a power of appointment exercised by a nontestamentary instrument may disclaim in whole or in part the succession to any property, real or personal, or interest therein by delivering or filing a written disclaimer in the manner provided in Statute 2.

Statute 2 provides that a person to whom any property or interest therein passes, by whatever means, may disclaim the property or interest in whole or in part by delivering or filing a written disclaimer. A disclaimer may be of a fractional share or undivided interest, a specifically identifiable asset, portion or amount, any limited interest or estate or any property or interest derived through right of survivorship. The disclaimer shall (1) describe the property or part or interest disclaimed, (2) be signed by the disclaimant or his representative and (3) declare the disclaimer and the extent thereof. A disclaimer made pursuant to this section shall be irrevocable and shall be binding upon the disclaimant and all persons claiming by, through or under the disclaimant.

LAW AND ANALYSIS

Section 2501(a) of the Internal Revenue Code imposes a tax on the transfer of property by gift by an individual.

Section 2511(a) provides that, subject to certain limitations, the tax imposed by § 2501 applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 25.2511-1(c)(2) of the Gift Tax Regulations provides, in relevant part, that, in the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law. There can be no refusal of ownership of property after its acceptance. In the absence of the facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property.

The U.S. Supreme Court has recognized that, under the predecessor to this regulation, an interest must be disclaimed within a reasonable time after obtaining knowledge of the transfer creating the interest to be disclaimed, rather than within a reasonable time after the distribution or vesting of the interest. Jewett v. Comm'r, 455 U.S. 305 (1982). The requirement in the regulations that the disclaimer must be made within a "reasonable time" is a matter of federal, rather than local law. Id. at 316. Whether a

period of time is reasonable under the regulations is dependent on the facts and circumstances presented.

In this case, Taxpayer will execute each disclaimer within nine months of learning of the transfers creating his interests in each of Trust 1, Trust 2, Trust 3, and Trust 4. Accordingly, based upon the information submitted and the representations made, we conclude that Taxpayer's proposed disclaimers of his interests in Trusts, if made on or before Date 3, will be made within a reasonable time after Taxpayer learned of the existence of the transfers under § 25.2511-1(c)(2). Furthermore, provided that Taxpayer's disclaimers are valid under State law and assuming the other requirements of § 25.2511-1(c)(2) are met, Taxpayer's disclaimer of his interests in Trusts will not be taxable gifts under § 2501.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: